IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 842 of 1998

in

SPECIAL CIVIL APPLICATION No 8929 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

SUDHABEN H PARIKH

Versus

SECRETARY SUMITRABEN THAKOR

Appearance:

1. LETTERS PATENT APPEAL No. 842 of 1998

MR PK JANI for Appellant No. 1

..... for Respondents No. 1-2

MR RC KODEKAR AGP for Respondent No. 3

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE D.H.WAGHELA

Date of decision: 12/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. A short question which has surfaced in this appeal under Clause 15 of the Letters Patent is whether the respondent No.1, a voluntary institution engaged in women welfare and upliftment activities and which is registered as a public charitable trust under the Bombay Public Trusts Act, is amenable to the writ jurisdiction under Article 226 of the Constitution of India or not? The challenge is against the judgment and order of the learned single Judge passed on, 14.8.1997, in Special Civil Application, No.8929 of 1995, initiated by the appellant challenging the order of the respondent No.1 dated 12.10.1995, reverting her to her original post, from the temporary appointment on the post of Superintendent-cum-Probation Officer. The petition came to be rejected by the learned single Judge holding that the respondent No.1 herein, Vikas Gruh, which is a registered charitable trust, is not amenable to the writ jurisdiction of the High Court, being not "State" or "other authority" as envisaged under Article 12 of the Constitution.

2. The skeleton projection of relevant and material factual profile may be first highlighted. The appellant-original petitioner joined as a temporary junior clerk with respondent No.1 trust. She was appointed on the post of Superintendent-cum-Probation Officer by respondent No.1 on a temporary basis for a spell of one year and she continued on the same post with the same status until the impugned order of reversion came to be recorded against her. She questioned the authority, legality and validity of the impugned order in the aforesaid writ petition, which, upon appreciation of the factual profile and the relevant constitutional provisions and case law, came to be rejected by the learned single Judge holding that the respondent No.1, Vikas Gruh, a public charitable trust, is neither a 'State' nor 'other authority' in view of the provisions of Article 12 of the Constitution.

3. The learned advocate Mr.Jani took us to the impugned order and the relevant facts on record in course of his submissions at the stage of admission. He emphatically tried to persuade us that the view taken by the learned single Judge that the respondent No.1 trust

is not amenable to the writ jurisdiction is wrong, but not successfully. He also placed reliance on the latest decision of the Apex Court rendered in "THE MYSORE PAPER MILLS LTD. v. THE MYSORE PAPER MILLS OFFICERS ASSOCIATION", reported in 2002 AIR SCW 204. We have given our anxious thoughts and considerations to the proposition laid down in the said decision. In the light of the factual scenario emerging from the record of the present case, the proposition propounded in the said decision is not attracted.

4. In view of number of judicial pronouncements of the Honourable Apex Court, following the important tests for determination of controversy as to whether an entity, organisation, agency, trust, society or any institution, when and why could be said to be an instrumentality or an organ or an agency of the State or other authority as contemplated under Article 12. It is true that the concept of "other authority" has been extensively explained and very well expounded by many judicial pronouncements. There are tests formulated in several cases by the Supreme Court to find out whether an entity or an institution is a "State" or its "instrumentality" or an "agency" or "other authority". Even if need be for probing, the Court could also lift the veil with a view to find out the real substance. There cannot be a straight-jacket formula in reaching to the conclusion whether an institution or an entity answers the eligibility criteria to be a "State" or "an instrumentality of State" or "other authority". The Court is obliged to consider various aspects and the factual profile of each of a given case. Unfortunately, the Constitution or the scheme of the trust of respondent No.1 has not been brought on record. Besides, the averments made in the affidavit by the original petitioner also do not go to suggest and satisfy the important test about the managerial control or supervisory jurisdiction being vested in the State.

5. After having taken into consideration the facts and circumstances emerging from the record of the present case, we have to plead our inability to agree with the submissions raised before us on behalf of the appellant-original petitioner and, therefore, we are left with no alternative but to affirm and confirm the reasoned views emanated from the factual profile of the case in the impugned judgment and to dismiss this Letters Patent Appeal.

6. No doubt, since the first part and the main

contention about amenability of Respondent No.1 trust to the writ jurisdiction of this Court, as envisaged by the constitutional provisions, it would not ordinarily detain us to probe other aspects. Nonetheless, incidentally, we have also elaborately examined the validity and legality of the impugned order reverting the original petitioner-appellant before us from the temporary post of Superintendent-cum-Probation Officer to her original post, and we have found that the petitioner cannot make any legitimate grievance against the impugned order of the respondent No.1 dated 12.10.1995 for the simple reason that holding of the said post by the appellant-original petitioner was on a temporary basis. It is an admitted fact that the petitioner was never confirmed on the post. It is, also, an admitted fact that she was never given permanency on the said post. Therefore, there is no justification for the petitioner to assail the impugned order of reversion recorded by the respondent No.1 Vikas Gruh Trust.

7. In view of the aforesaid discussions and our approval, affirmation and confirmation of the views propounded and the ultimate conclusions reached by the learned single Judge while rejecting the writ petition, this Letters Patent Appeal obviously is liable to meet only one legal fate and that is dismissal. We accordingly dismiss the appeal with no order as to costs in the peculiar facts of this case. Sd/-

(J.N.Bhatt, J.)

Sd/-

(D.H.Waghela,J.)

12.2.2002

(KMG Thilake)